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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 EARL WARNER,

12 Plaintiff,

13 v.

14 P. VELARDI, et al.,

15 Defendants.
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Case No.: 16cv1924-LAB (RNB)

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

17 Plaintiff, state prisoner, Earl Warner is proceeding *pro se* and *in forma*
18 *pauperis* in this civil rights action brought pursuant to 28 U.S.C. § 1983.
19 Defendants Nurse Practitioner Velardi and Dr. Cook filed a motion for summary
20 judgment. Warner broke his hand when he punched the concrete wall in his cell.
21 He claims Defendants violated his Eighth Amendment rights by failing to provide
22 him with the medical treatment he believes was appropriate. This matter was
23 referred to Magistrate Judge Robert N. Block for report and recommendation. After
24 receiving briefing, on August 14, Judge Block issued his report and
25 recommendation (the "R&R"). It found that plaintiff's allegations against
26 defendants were insufficient to raise a genuine issue of material fact, and
27 recommended granting defendants' motion for summary judgment and dismissing
28 the action with prejudice.

1 The R&R set a deadline of fourteen days for filing objections. After the R&R
2 was issued, Warner filed a notice saying he had been transferred to a different
3 facility. Because it was not clear whether he had received the R&R, the Court
4 directed that a copy be sent to his new address, and *sua sponte* extended the
5 deadline for objections.

6 Warner then filed a request (Docket no. 54), supported by an affidavit, asking
7 for a second extension of fifteen more days. The affidavit made clear Warner was
8 prepared to draft objections, but just wanted more time. The Court granted a longer
9 extension than he requested — twenty-five days — making the new deadline
10 October 25. The deadline for objecting to the R&R has passed, however. Warner
11 has filed no objections, nor has he requested additional time to do so.

12 A district court has jurisdiction to review a Magistrate Judge's report and
13 recommendation on dispositive matters. Fed. R. Civ. P. 72(b). “The district judge
14 must determine de novo any part of the magistrate judge's disposition that has
15 been properly objected to.” *Id.* “A judge of the court may accept, reject, or modify,
16 in whole or in part, the findings or recommendations made by the magistrate
17 judge.” 28 U.S.C. § 636(b)(1). This section does not require some lesser review by
18 the district court when no objections are filed. *Thomas v. Arn*, 474 U.S. 140, 149–
19 50 (1985). The “statute makes it clear that the district judge must review the
20 magistrate judge's findings and recommendations de novo *if objection is made*,
21 but not otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir.
22 2003) (en banc) (emphasis in original).

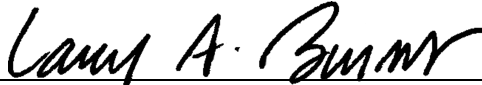
23 The Court **ADOPTS** the R&R's unobjected-to factual findings. A review of
24 those facts shows there is no genuine issue of material fact about whether either
25 Defendant was deliberately indifferent to Warner's serious medical needs. They
26 both offered him treatment for his injury, and medication for the pain. There is no
27 evidence that any delays in treatment were deliberate, or even that they were
28 attributable to these Defendants. The evidence was insufficient to establish an

1 Eighth Amendment claim. *See Estelle v. Gamble*, 429 U.S. 97, 105–06 (1976)
2 (the Eighth Amendment is violated by “deliberate indifference” to serious medical
3 needs, not mere negligence). The fact that Warner disagreed with their decisions
4 does not establish a claim. *See Toguchi v. Chung*, 391 F.3d 1051, 1058–60 (9th
5 Cir. 2004) (difference of opinion about appropriate medical treatment does not
6 amount to an Eighth Amendment violation).

7 The Court has reviewed the R&R, finds it to be correct, and **ADOPTS** it.
8 Defendants’ motion for summary judgment is **GRANTED**. This action is
9 **DISMISSED WITH PREJUDICE**.

10 **IT IS SO ORDERED.**

11 Dated: November 6, 2018

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14 Hon. Larry Alan Burns
15 United States District Judge
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